

## 2005 DRAFTING REQUEST

### Bill

Received: 11/04/2004

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Neal Kedzie (608) 266-2635

By/Representing: Matt Phillips

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kedzie@legis.state.wi.us

Carbon copy (CC:) to:

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Recovery in wrongful birth or wrongful life cases

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#### Instructions:

See Attached 03-1399

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/05/2004	lkunkel 11/19/2004 lkunkel 11/22/2004		_____			
/1			rschluet 11/22/2004	_____	lnorthro 11/22/2004	sbasford 12/29/2004	

FE Sent For:

*none  
needed*

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/?	rnelson2 11/05/2004	lkunkel 11/19/2004 lkunkel 11/22/2004		_____			
/1			rschluet 11/22/2004	_____	lnorthro 11/22/2004	per Kedzie's office 12/29/04	

***LRB-0642***

11/22/2004 04:44:34 PM

Page 2

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

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<END>

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FE Sent For:

<END>

**Nelson, Robert P.**

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**From:** Phillips, Matt  
**Sent:** Thursday, November 04, 2004 9:09 AM  
**To:** Nelson, Robert P.  
**Subject:** Drafting Request

1399

Sen. Kedzie is interested in re-introducing 2003 Senate Bill 27, relating to recovery in cases involving wrongful birth or wrongful life. At this time, we do not foresee any changes to this legislation prior to introduction.

As the drafter last session, I assume you will again be responsible for this area. Could you please redraft this proposal for Senator Kedzie.

Thank you.

Matt Phillips  
Policy Advisor  
State Senator Neal Kedzie  
(608) 266-2635

**SENATE BILL 27 (LRB -1399)**

An Act to create 895.68 of the statutes; relating to: recovery in cases involving wrongful birth or wrongful life.

**2003**

- 02-12. S. Introduced by Senators **Kedzie, S. Fitzgerald, Schultz, A. Lasee, Kanavas, Welch, Lazich, Leibham, Stepp, Cowles and Reynolds**; cosponsored by Representatives **Weber, Montgomery, Gundrum, Krawczyk, Petrowski, Ziegelbauer, Stone, Bies, Suder, Hines, Nischke, Owens, Ladwig, McCormick, Gunderson, Ott, Albers, Nass, Plale, Kerkman, J. Fitzgerald, Vrakas, Freese, Friske, Kreibich, Seratti, Hahn and Grothman**.
- 02-12. S. Read first time and referred to committee on Judiciary, Corrections and Privacy ..... 70
- 10-28. S. Public hearing held.
- 10-28. S. Executive action taken.
- 10-30. S. Report passage recommended by committee on Judiciary, Corrections and Privacy, Ayes 3, Noes 1 ..... 454
- 10-30. S. Available for scheduling.

**2004**

- 03-31. S. Failed to pass pursuant to Senate Joint Resolution 1 ..... 749

5  
2003 SENATE BILL 27

February 12, 2003 - Introduced by Senators KEDZIE, S. FITZGERALD, SCHULTZ, A. LASEE, KANAVAS, WELCH, LAZICH, LEIBHAM, STEPP, COWLES and REYNOLDS, cosponsored by Representatives WEBER, MONTGOMERY, GUNDRUM, KRAWCZYK, PETROWSKI, ZIEGELBAUER, STONE, BIES, SUDER, HINES, NISCHKE, OWENS, LADWIG, McCORMICK, GUNDERSON, OTT, ALBERS, NASS, PLALE, KERKMAN, J. FITZGERALD, VRAKAS, FREESE, FRISKE, KREIBICH, SERATTI, HAHN and GROTHMAN. Referred to Committee on Judiciary, Corrections and Privacy.

- Reben
- 1 AN ACT to create 895.68 of the statutes; relating to: recovery in cases involving
- 2 wrongful birth or wrongful life.

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***Analysis by the Legislative Reference Bureau***

✓ Under current law, if a child is born with a disability that a person (usually a health care provider) could have informed the parents about while there was still time for the child to be aborted, that person may be liable for the costs of caring for that child and for the child's related medical expenses. ✓ The person could be liable under current law if he or she negligently failed to inform the parents of the disability or if he or she negligently incorrectly diagnosed the fetus's condition while an abortion was an available option. If the parents of the child sue for costs resulting from caring for that child, the action is called a wrongful birth action. If the child sues for damages because of being born with a disability, the action is called a wrongful life action. ✓ The Wisconsin Supreme Court has recognized the right to sue for wrongful birth, but has not recognized the right to sue for wrongful life. ✓

This bill prohibits the recovery of damages from a person in a wrongful birth or wrongful life action if the damages resulted from a condition that existed at the time of the child's birth and the defendant's negligence contributed to the mother's decision not to undergo an abortion.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

## SENATE BILL 27

## SECTION 1

SECTION 1. 895.68 of the statutes is created to read:

**895.68 Limit on recovery; wrongful birth and wrongful life.** (1) In this section:

(a) "Abortion" has the meaning given in s. 253.10 (2) (a).

(b) "Wrongful birth action" means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child, seeks economic or noneconomic damages resulting from a condition of the child that existed at the time of the child's birth, and is based on a claim that a person's act or omission contributed to the mother's decision not to undergo an abortion.

(c) "Wrongful life action" means a cause of action that is brought by or on behalf of a child, seeks the child's economic or noneconomic damages resulting from a condition of the child that existed at the time of the child's birth, and is based on a claim that a person's act or omission contributed to the mother's decision not to undergo an abortion.

(2) In a wrongful birth action or a wrongful life action, no person may recover damages from another person resulting from any condition that existed at the time of a child's birth if that other person's negligent act or omission contributed to the mother's decision not to undergo an abortion.

(END)